Quazite Corporation *and* Oil, Chemical and Atomic Workers International Union, AFL–CIO, Local 3-987. Cases 10–CA–25383, 10–CA–25449, 10–CA–25485, 10–CA–25867, and 10–CA–26320–2

December 21, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

On June 23, 1993, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions and a supporting brief.[1]

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Quazite Corporation, Lenoir City, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

[2] We affirm the judge's granting of the General Counsel's motion in Limine, precluding the Respondent from eliciting testimony from General Counsel witness Lawson for the purpose of impeaching Lawson regarding a collateral matter that arose during an internal General Counsel investigation. While the General Counsel's motion did prevent the Respondent from asking questions regarding the collateral matter, we find that under Rule 609(a) of the Federal Rules of Evidence the Respondent was not precluded from asking the broader evidentiary question as to whether or not Lawson was ever convicted of having committed perjury or of having suborned perjured testimony. The Respondent failed to make this inquiry. If the Respondent had done so and Lawson had responded affirmatively, the Respondent could have engaged in a detailed inquiry in an attempt to impeach Lawson's credibility. Even if Lawson had responded in the negative and the judge's ruling had taken effect, the Respondent would have been able under Rule 801(d)(1) to impeach Lawson's credibility by showing during cross-examination that he had made prior inconsistent statements in his testimony on direct examination.

In the absence of any formal finding of perjury, we agree with the judge that the testimony the Respondent sought to elicit, whether for direct or for cross-examination purposes, pertained to a strictly collateral matter, was not privileged by any Federal Rule of Evidence on admissibility, and was not relevant to or probative of the allegations contained in the amended complaint.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Frank F. Rox Jr., Esq., for the General Counsel.
A. McArthur Irvin, Esq. (Stuart & Irvin), of Atlanta, Georgia, for the Respondent.
Hugh A. Jacks, International Representative, Oil, Chemical & Atomic Workers, International, AFL–CIO, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on December 9 and 10, 1992, and January 13 and 14, 1993, at Loudon, Tennessee, pursuant to an order consolidating cases, third amended consolidated complaint entered by the Regional Director of Region 10 of the National Labor Relations Board (the Board) on November 6, 1992. The charge in Case 10–CA–25383 was filed on June 19, 1991. The charge in Case 10–CA–25449 was filed on July 24, 1991. The amended charge in Case 10–CA–25449 was filed on August 9, 1991. The second amended charge in Case 10–CA–25449 was filed on September 12, 1991. The charge in Case 10–CA–25485 was filed on August 9, 1991. The charge in Case 10–CA–25867 was filed on March 17, 1992. The amended charge in Case 10–CA–25867 was filed on June 16, 1992. The charge in Case 10–CA–26320–2 was filed on October 21, 1992. The charges were all filed by the Oil, Chemical & Atomic Workers International Union, AFL–CIO, Local 3-987 (the Union). The consolidated complaint as amended at the hearing alleges violations of Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act (the Act) were committed by Quazite Corporation (the Respondent). The Respondent by its answer filed November 19, 1992, has denied the commission of any violations of the Act.

On the entire record, in this proceeding, including my observations of the witnesses who testified herein, and after due consideration of the briefs filed by the General Counsel for the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Business of Respondent

The complaint alleges, Respondent admits, and I find that at all times material herein Respondent is now and has been a Delaware corporation, with an office and place of business located at Lenoir City, Tennessee, where it is engaged in the manufacture and sale of polymer concrete products, that during the past calendar year, a representative period, it sold and shipped finished products valued in excess of $50,000 from its Lenoir City, Tennessee plant directly to customers located outside the State of Tennessee, and that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that at all times material, the Union is and has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE APPROPRIATE UNIT

The complaint alleges, Respondent admits, and I find that at all times material, that the appropriate bargaining unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act is and has been:

> All production and maintenance employees employed at the Respondent's Lenoir City, Tennessee, plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

Background

Respondent manufactures polymer concrete products in Lenoir City, Tennessee. The Respondent and the Union entered into their first collective-bargaining agreement effective June 1990 until December 1991. The parties commenced negotiations for a successor agreement in November 1991, but were unsuccessful in obtaining agreement. Respondent is alleged to have committed numerous violations of the Act. The employees engaged in a strike from June to August 1992, when the employees offered to and were returned to work. On August 4 the Respondent withdrew recognition from the Union based on the receipt by the Respondent of signed notices by a majority of the employees in the bargaining unit that they no longer desired to be represented by the Union. The withdrawal of recognition is also alleged as a violation of the Act.

1. The alleged denial of an employee's request for union representation for an investigatory meeting which could lead to disciplinary action

This allegation involves an instance in July 1991 wherein Supervisor Richard Robbins called small-box casting employee Keith Sartin into his office to discuss his low production. On the way to the office Sartin testified he saw Union President Thomas Lawson and told him he was being written up for his production. Sartin testified further that when Lawson attempted to represent him, Robbins refused to permit Lawson to attend the meeting. At the meeting Robbins compared Sartin's production records with those of other employees, and according to the testimony of Sartin told him that if he did not improve his productivity he would be subject to further discipline. Sartin testified he asked for representation during the course of this meeting and was then told by Robbins that the meeting was terminated. Sartin testified he had previously received a written warning for low production and that he received another warning the Friday following this meeting. Union President Thomas Lawson corroborated the testimony of Sartin and testified that in late afternoon in July 1991 he observed Supervisor Richard Robbins and employee and union member Keith Sartin coming toward the office and that Sartin told him, ''Come on, I'm going to be written up for my production.'' Lawson followed them to the office door and Sartin said to Robbins, ''I need him to represent me.'' Lawson testified that Robbins said, ''No, we don't need you Thomas [Lawson], and just sort of took his hand like that and shut the door in front—front of me.'' Supervisor Richard Robbins testified that in July 1991, he spoke to Sartin who was a small box caster under his supervision. He asked Sartin if he could talk to him about his production and ''told him it wasn't a disciplinary meeting. I just needed to talk to him about his production and show him some records and he said, Do I need a rep [Union] and I said, 'No, you don't.' I said, 'That's—I just want to show you your previous week's production and see what we can do to improve it.''' Robbins testified that the meeting was held in the supervisor's office and lasted 8 to 10 minutes. He had the production records for all the other 10 to 12 casters for the prior several weeks. He showed Sartin the production records of other casters and Sartin responded by saying, ''He just more or less told me, you know, he couldn't compete with other guys and I kept telling him, 'Well, you're one of my older casters, you know, I just need you to get up there with some of the other casters, close to their production.''' Robbins testified further, ''After I asked Keith [Sartin], you know, if there was something I could do to help him on his production, I told him, you know, I expected him to start seeing an improvement in his production. He got upset and said he wanted to see Thomas [his union representative]. I told him, I said, 'You don't need to see Thomas right now.' I said, 'You can see him after work but right now' 'I said, I just want you to increase your production' and he says, 'Oh, you're threatening me,' and said, 'I want a Union rep,' and I said, 'No, I'm not, you know, so that's all I've got to say, you know, the meeting's terminated,' you know and this was right at about 3:30 anyway.'' Robbins testified he talked to all of the other casters to ''get everybody up to par on their production.''

On cross-examination Robbins testified he did not remember seeing Lawson prior to the meeting. He also testified that he did not know one way or the other whether he had written up Sartin prior to the meeting, but that he did eventually write him up. He did write Sartin up a week or so after the meeting. He also acknowledged that he had written him up more than once for poor production but did not recall the dates of these writeups.

Analysis

I find that Respondent violated Section 8(a)(1) of the Act by the actions of its supervisor, Richard Robbins, in denying employee Keith Sartin union representation upon his request both before and during the meeting. I credit Sartin's specific testimony as to what happened before and during the meeting as corroborated by Lawson with respect to the request for representation before the meeting. The testimony of Sartin and Robbins of what took place during the meeting does not differ significantly. By both accounts at the meeting Robbins apprised Sartin that his production was low and that he expected it to improve with the threat of discipline if it did not. Moreover, as I have credited Sartin's testimony that he had received a written warning for low production prior to this meeting, I find under all of the objective circumstances, that Sartin had a reasonable basis for believing that this meeting was an investigatory meeting which could lead to discipline. In fact Robbins acknowledged that he reviewed the production records of other employees and asked Sartin what could be done to improve his production and told him he expected it to improve by the next week. When it did not improve, he issued Sartin a written warning for poor production a week or so later.

In *NLRB v. Weingarten*, 420 U.S. 251 (1975), the Supreme Court upheld the ''Board's construction that Section 7 creates a statutory right in an employee to refuse to submit without union representation to an interview which the employee reasonably fears may result in his discipline . . . .'' The Court also upheld the contours and limits of the statutory right shaped by the Board in prior decisions:

> First, the right adheres in Section 7's guarantee of the right of employees to act in concert for mutual aid and protection. . . . Second, the right arises only in situations where the employee requests representation. . . . Third, the employee's right to request representation as a condition of participation in an interview is limited to situations where the employee *reasonably believes the investigation will result in disciplinary action* . . . . [Emphasis added.] Fourth, exercise of the right may not interfere with legitimate employer prerogatives, Fifth, the employer has no duty to bargain with any union representative who may be permitted to attend the investigatory interview. [Id. at 256–259.]

In *Quality Mfg. Co*., 195 NLRB 197, 199 (1972), cited with approval by the Supreme Court in its *Weingarten* decision, the Board said:

> This seems to us to be the proper rule where as here, the interview, whether or not purely investigative, concerns a subject matter related to disciplinary offenses. We would not apply the rule to such run-of-the-mill shop-floor conversation as, for example, the giving of instructions or training or needed corrections of work techniques. In such cases there cannot normally be any reasonable basis for an employee to fear that any adverse impact may result from the interview, and thus we would then see no reasonable basis for him to seek the assistance of his representative.

In his brief the Respondent contends that the ''conversation'' between Robbins and Sartin was not an interview as Robbins ''sought no information from the employee, but rather was communicating production information.'' However, Robbins' own testimony indicates that he was inquiring of Sartin about what could be done to improve his production. Linked as this was with the threat of further discipline if Sartin's production did not improve, I find that this was an investigatory interview to learn what the problem was with Sartin's production and I further find that Sartin had a reasonable basis for believing that this meeting could lead to discipline. See *Columbia Portland Cement Co*., 294 NLRB 410, 413 (1989).

2. The alleged promise of benefit to employee Donald Brooks Wade if he would resign from the Union

Employee Donald Brooks Wade testified that in October or November 1991, he had been awarded employee of the month at a meeting and after the conclusion of the meeting, his supervisor, Scott Elrod, asked him to walk out the back of the plant with him. Elrod then said, ''I didn't bring you here so nobody would see us talking.'' ''I just wanted to congratulate you on being Employee of the Month,'' and ''If you weren't in the Union we would probably work better together.'' Wade was an officer of the Union at the time of this conversation. Wade testified further that about 2 weeks to a month later Elrod asked him to step out to the front of his work area and asked him, ''Have you thought anymore about what we were talking about?'' Wade replied, ''Yeah, I have no intentions of coming out of the Union.'' Elrod replied, ''Okay.''

Supervisor Scott Elrod acknowledged having had a conversation with Wade at the time of his award of employee of the month and testified he congratulated Wade on his selection. He denied, however, having told Wade that if he were not in the Union, he and Wade could work together better. He also acknowledged having had a conversation with Wade several weeks later, but denied having made any references to the effect that he and Wade could work together better if Wade were not in the Union.

Analysis

I credit Wade's specific testimony regarding the comments made to him by Elrod over Elrod's denial thereof, I find the comments concerning his ability to work together better with Wade if Wade were not a union member were unlawful enticements of benefits to be bestowed on Wade if he resigned from the Union and that Respondent thereby violated Section 8(a)(1) of the Act.

3. The alleged promise of the removal of a disciplinary warning if the employee would resign from the Union

Former employee Mike Summitt testified that in late 1991 he received a disciplinary writeup for poor job performance and he filed a grievance concerning it. However, the union representatives did not agree to arbitrate his grievance. He became upset about this and ''was blowing off some steam'' on the plant floor including the use of profanity to anyone who would listen. As he got ready to go on a break Supervisor Scott Elrod stopped him and told him ''that if I would withdraw from the Union that he would get my write-up took out of my records.''

''I told him I would not withdraw from the Union.'' Summitt told Union President Lawson of this offer by Elrod. Summitt did not withdraw from the Union. Elrod denied ever having made such a statement to Summitt nor having having had any conversation with him about withdrawing from the Union and testified further that he did not supervise Summitt nor did he maintain the personnel records.

Analysis

I credit Summitt's testimony concerning the offer by Elrod of the removal of a disciplinary writeup from his file if he would withdraw from the Union. I found his testimony specific and credible and I credit it over Elrod's denial. This was an unlawful offer of a benefit if Summitt would withdraw from the Union and the Respondent thereby violated Section 8(a)(1) of the Act. See *House Calls, Inc*., 304 NLRB 311, 313 (1991), wherein the Board held promising employees improved terms and conditions of employment if they voted against the union was unlawful.

4. The alleged statement that employees would be paid monyes due them if they resigned from the Union

Employee Steve Sloan testified that in January 1992 he and fellow employee Charles Price noticed a 15-cent-per-

hour decrease in their pay on their checks. This refers to a deduction of a premium they had formerly been paid for doing casting work which deductions and the issues concerning them will be discussed, infra. Sloan and Price went to see Supervisor Steve Carr about the reduction in their pay. Carr said he would try to find out the reason for the reduction and then sent Price off to do a job. Carr then told Sloan, ''Steve, you're a good worker.'' ''You quit the Union I'll get your money back.'' Sloan told Union President Lawson about this conversation. Employee Charles Price testified that in January 1992, Steve Sloan asked him if he had observed any difference in his pay. Price had not noticed anything, but looked at his check that evening and noted a 15-cent deduction. The next day he and Sloan went to Supervisor Steve Carr and asked him about it. Carr told them he would find out about it and told him to go back to work and Carr and Sloan remained and talked. Later Sloan came up to Price and told him that Carr had told him (Sloan) that, ''if he [Sloan] would get out of the Union that he could probably get his money back for him.'' Price then confronted Carr and told him ''he couldn't say that, that that was illegal. Carr said he didn't say it just like that.''

The Respondent called Supervisor Steve Carr who testified that in late January 1992, Sloan approached him and said that he had just discovered that he had received $6.50 per hour instead of his prior rate of $6.65 per hour. Carr told Sloan he did not realize this and noted at the hearing that Sloan was no longer working for him at the time. Carr testified however that he told Sloan he would check into it. Price also said he wanted the reduction in rate checked into for him and Carr agreed to do so. Carr testified he went to talk to Plant Superintendent Mike Riordan who told Carr to check into the payroll records to find out what was happening. Carr checked the records and found that the pay rate reduction had occurred as reported to him by Sloan and Price, and also verified that they had not been ''casting'' during this time which ''casting'' carries the extra premium rate of 15 cents per hour. He gave this information to Plant Manager Richard Hammat and Riordan. Carr denied ever having any conversation with Sloan in which he told Sloan that he would help him get the money (15-cent premium) back. Nor did he have any similar conversation with Price.

Analysis

I credit the testimony of Sloan as corroborated in part by Price over the denials of Carr. I thus find that Respondent violated Section 8(a)(1) of the Act by the promise made by its Supervisor Carr to employee Sloan that Carr would get his money (the extra casting premium) back if Sloan would quit the Union which was a promise of a benefit to Sloan if he abandoned his Section 7 right to belong to a union. See *Fabric Warehouse*, 294 NLRB 189, 191 (1989).

5. Alleged threat of reprisals if employees Thomas Lawson and Mike Summitt returned to work after the strike

The Union called a strike which was honored by a number of employees in June 1992 and offered to return in August 1992. Union President Thomas Lawson testified that approximately 2 weeks prior to the offer of the Union to return to work, Supervisor Denny Walker called him and asked if it were true that some of the employees wanted to come back into the plant. Lawson told Walker he could not discuss it with him. Walker then said if it were true, ''it would be in my [Lawson's] best interest not to return to the plant, that he had been in a meeting with Mr. Hammat and Mike Riordan and the rest of the supervisors that if I thought it was rough up until this time, I would not see nothing until—when I came back, it would be made so rough enough for me to quit this time.''

Employee Mike Summitt testified that his Supervisor Denny Walker called him up about a month before the strike was over (the strike ended August 4, 1992) and asked Summitt how he was doing and Summitt replied, ''Just fine.'' Walker then said, ''I heard you got another job,'' and I said, ''Yes.'' He said, ''Well you better stay where you are because if you come back into Quazite,'' says, ''You'll never have a minute's peace.'' Summitt replied, ''I wasn't planning on coming back to Quazite because I had got a real job.'' On cross-examination Summitt was asked if Walker called him at his home and he replied in the affirmative.

Respondent presented Denny Walker concerning both allegations and Dick Hammat to respond to the allegation concerning Summitt. Walker denied telephoning Lawson at any time. Walker also testified that he did not telephone Summitt at any time during the strike and that prior to the strike he called the telephone number listed in the personnel records for Summitt to offer him overtime work and that a neighbor answered the telephone and advised that Summitt did not have a telephone. Hammat also testified that Respondent's management had attempted to contact Summitt after the strike and the telephone number in Respondent's record was that of a neighbor who would get Summitt and Summitt would call them back. Respondent contends this impacts negatively on Summitt's credibility and that Lawson's overall credibility was destroyed by reason of other testimony he gave at the hearing.

Analysis

I credit the explicit testimony of Lawson and Summitt and find that they were threatened with unspecified reprisals by Supervisor Walker as they testified and that Respondent thereby violated Section 8(a)(1) of the Act. I reject Respondent's assertion that Lawson's overall credibility was destroyed by other testimony he gave at the hearing. I also find that Respondent's questioning of Summitt as to whether he received the call from Walker at home to which Summitt responded, ''[Y]es,'' does not compel the conclusion that Summitt was not telling the truth as his answer in the broader sense could well be accurate in that he was home at the time of the call as opposed to at work or elsewhere. I do not find it determinative whether Summitt had his own telephone or relied on a neighbor's telephone assuming arguendo that Summitt did not have a phone at his home. See *Outboard Marine Corp.*, 307 NLRB 1333 (1992).

6. The alleged 8(a)(4) violation—the denial of premium pay for casting to union members Sloan and Price and the deduction of previous casting pay paid to nonunion members Tatham and Price

In support of this allegation the General Counsel produced testimony concerning the meetings held by Plant Super-

intendent Mike Riordan with the four employees affected by the adjustment in premium pay for casting after unfair labor practices charges had been filed concerning the loss of premium pay for casting. Price testified as follows:

> A. Mike Riordan said that . . . he made some mistake he was going to fix it. But he got our charges in that morning where we'd filed a charge. He said we wouldn't get our money because of that, that—at first he said that we would get our money and then he said that we wouldn't get our money because we filed the charge. He got our charges in that morning.
>
> [Respondent] said that instead of us getting the money back that they owed us, that they'd just take the money back away from [Tatham and Honick].

Sloan testified as follows:

> A. Well, as soon as we walked in [Riordan] said, ''Boys, I admit I made a mistake.'' He said, ''I's going to give you your money back.'' He said, ''But I got this Labor Board charge today an instead of getting your money back I'm going to take away David Tatham's an Ken Honick's.''

While Sloan and Price had been asked into Riordan's office together, nonunion members David Tatham and Ken Honick were called into the office together.

Tatham testified:

> Q. And [Riordan] said . . . content to . . . what now?
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> A. To pay the other two fellows . . . Price and Sloan the $50 but they . . . filed a charge with the Labor Board and his hands were tied in the matter.

The General Counsel also relies on testimony from Plant Manager Hammat that he could not ''resolve the situation'' because of the unfair labor practice charges and contends that Respondent ''resolved'' the situation by refusing to pay the wage premium to union employees and taking the money away from Tatham and Honick and contends the ''illegality arises not from the pay adjustment, *per se*, but by Respondent's telling employees that the reason for its action was caused by the filing of charges with the National Labor Relations Board. By linking the filing of ULP charges to a diminution of employees' wages, Respondent diminished the Union's status in the eyes of all non-member employees, and thereby contributed to employee disaffection from the Union.''

The Respondent, on the other hand, contends that it attempted to resolve the matter by treating the employees equally by deducting casting premium amounts which employees Honick and Tatham were incorrectly paid for times when they were not casting and that employees Price and Sloan were not penalized as they had performed no casting work since the shutdown of the drain line in August 1991.

Supervisor Stephen Carr testified he had been in charge of the casting line with six employees reporting to him until the line was shut down in August 1991. The six employees were David Tatham, Ken Honick, Willie Smith, Arvil Buckner, Sloan, and Price. Carr testified that when the drain line was shut down, the six employees were scattered throughout the plant to different jobs. Sloan ''mainly was on a fork truck.'' Price was ''mainly on a fork truck and working out in the yard doing odd jobs.'' Smith went to the brick line as a caster. Buckner did various jobs including casting and eventually quit. Honick did casting, mainly on the lid line and also did other jobs. Tatham casted catch basin and end caps and did various jobs. Casters received a 15-cent premium per hour for casting. In late January 1992 Sloan asked Carr why he had been cut from $6.65 per hour to $6.50 per hour. Carr told Sloan he was not aware of this as Sloan was no longer working for Carr, but told Sloan he would check into it. Price also approached Carr and said he wanted his paycheck checked on and Carr agreed to do so. Carr checked on the production records which showed that as of the week ending ''10/27/91'' Honick and Tatham were paid at the $6.65 per hour rate and Price and Sloan were paid $6.50 as they did no casting work from ''11/16/91'' forward. The records also disclosed that Tatham and Honick did not do casting for the entire period although they had been paid for the entire period at the $6.65 casting rate until January 26, 1991, when Carr checked the records. Carr turned this information over to Hammat and Riordan and testified he did not discuss it further with Sloan or Price and denied having told Sloan that if he quit the Union, he would try to get his money back and also denied that he had any conversation with Price about an earlier discussion with Sloan concerning an alleged statement by Carr that if Sloan would leave the Union, he would get him his money back. On cross-examination Carr acknowledged that he was present when Sloan and Price were called into Hammat's office to discuss the matter and that after having Price and Sloan in, Tatham and Honick were called in.

Plant Superintendent Mike Riordan testified that when the drain line ceased to operate in August 1991, the six employees on it were assigned to other jobs and in November 1991, he had eliminated the 15-cent casting premium for Sloan and Price since they were no longer doing casting. However, from August when the drain line went out of existence until November when the premium was eliminated Sloan and Price received the casting premium although they were no longer doing casting. When the drain line had shut down four of the six employees who had prior casting experience were moved to other casting positions whereas Sloan and Price who had no casting experience were moved into the assembly area doing noncasting jobs, driving forklift trucks, and working in other departments as required. Of the four employees with casting experience, employee Willie Smith did 100-percent casting on the brick line, and the other three employees also did considerable casting during the period from August to November 1991. Supervisor Carr raised with him the question concerning the reduction of the premium for Sloan and Price and questioned why Honick and Tatham were continuing to receive the casting premium as he was aware there had been some days when they were not casting. He explained the reason for the loss of the casting premium to Sloan and Price on an occasion when he was making his rounds in the plant and on a subsequent occasion in the plant he explained it to Honick and Tatham who asked him about it. Initially he told them they were going to check the records to determine if anyone was paid incorrectly and that he would get back to them and he asked Supervisor Stephen Carr to check the records. He denies having made any statement to the employees that he was going to give an increase

to one group (Sloan and Price), but now would not because they had filed unfair labor practice charges with the Board concerning this pay reduction. He told all four employees that they were attempting to resolve the matter and had received the charges and were reviewing them to determine what effect they might have on the matter.

Plant Manager Richard Hammat testified that approximately half of the plant was in the casting department in late 1991. The drain line was a machine line under the same groupings as the casting department. Respondent ceased operating the drain line in August 1991 and the six employee who were then working on the drain line were transferred to other jobs. The six employees were Arvil Buckner, Ken Honick, David Tatham, Charles Price, Steve Sloan, and Willy Smith. All of the six, except David Tatham and Ken Honick, were known by Hammat to be members of the Union. Following the shutdown of the drain line an issue arose with employees Charles Price and Steven Sloan who had been taken off of caster incentive pay of 15 cents per hour while the other four employees remained on caster pay. Hammat testified it was brought to his attention in late December 1991, or early January 1992, that Price and Sloan were not receiving the same pay as Tatham and Honick who continued to receive the 15-cent-per-hour incentive pay. He explained that in accordance with the contract language, the drain department which was a casting operation had been shut down for lack of work and that the employees had been transferred to other areas in the plant and Honick and Tatham ''had continued casting and were in a casting mode,'' and were thus paid as casters whereas Sloan and Price correctly no longer received casting pay as Sloan was driving a forklift truck and Price was working at odd jobs in the plant and both were no longer doing casting work. He also explained that according to the contract language after 30 days employees assigned to a temporary position no longer received the rate of pay for the area from which they were transferred, but that they then received the rate of pay for the job to which they have been transferred. A supervisor had been instructed to look at the records and determined the accuracy of the rate change. Subsequently he received notice that an unfair labor practice charge had been filed alleging that Price and Sloan had been discriminated against by eliminating the 15-cent-per-hour incentive rate for them because of their membership in the Union whereas Tatham's and Honick's pay were not affected because they were not members of the Union. Hammat testified he talked with the employees and told them he could not ''resolve the situation because we needed a third party now between the Union, the Company, and the Labor Board would make a decision or determination of what the correct thing to do would be.''

> At that point, we said we would not pay the two individuals [Sloan and Price] that had not received the casting rate because we felt that was the wrong thing to do. Since they had not done casting, we didn't see the need to pay them the higher rate of pay.
>
> We reviewed the two people [Tatham and Honick] that had been receiving the casting rate, and there was some time periods where they were not casting in the casting mode.
>
> [W]e took the total time difference between the casting and the non-casting time, subtracted that difference out. That equated to about fifty dollars ($50), in terms of what could be construed that they were over paid for the time they were not casting.

Analysis

I find the General Counsel has failed to establish a violation of Section 8(a)(4) of the Act by Respondent's actions in refusing to pay Sloan and Price the casting incentive pay and by deducting the amount of overpayment from Tatham and Honick's wages. I have reviewed the testimony of the foregoing participants in the actions and discussions as set out above and I conclude the evidence is insufficient to establish that any of the employees were discriminated against because of the filing of the unfair labor practice. In fact based on the testimony presented by Respondent which I credit as supported by Respondent's records, Respondent ultimately resolved this matter by paying the employees in accordance with their proper rates based on what they were actually doing. Moreover, even assuming the testimony of the employees as to what Respondent's representatives told them with respect to what the reason was (the filing of the unfair labor practices) for the ultimate resolution of the matter, these comments do not rise to the level of an unfair labor practice and were factual under the circumstances. I, accordingly, will recommend the dismissal of these allegations.

7. The extension of Billy Trollenger's probationary period

The complaint alleges that Respondent violated Section 8(a)(3) of the Act when it extended employee Billy Trollenger's probationary period because he joined the Union. Former employee Billy Trollenger testified that he was hired by Respondent on May 13, 1991, as a lid caster and underwent a required 31 working days' probationary period. Trollenger testified that at the end of his probationary period he had a conversation with his supervisor, Richard Robbins, who told him he ''was doing great and doing better than people who had been there for a year, and I asked him was I full-time and he said, 'Yes,' and he give me the card.'' This refers to a brown plastic insurance card issued to employees after they become permanent. The effective date on the card was June 24, 1991. Trollenger testified that he joined the Union on the next day, signed a union dues-check-off authorization card and received a union hat which he started wearing. The following day he was again called back to Robbins' office and Robbins told him that he was going to extend his probation as he needed to get his production up to 135 percent. Trollenger testified that Robbins had not spoken to him about his production prior to the day he joined the Union. On cross-examination Trollenger testified that at the initial meeting, at about 31 working days Robbins told him he was making good quality parts, but denied that Robbins showed him any production records. He testified also that at this meeting Robbins told him to keep up the good work. The day after this initial meeting he joined the Union. It may have been as many as 4 days later that he was called into the second meeting with Robbins at which time Robbins told him he was going to extend his probation. He was hired at a rate of $5.85 per hour and then received a raise bringing his rate up to $6.10 after he became a permanent employee and received another raise to $6.65 per hour after a year.

Respondent called Supervisor Richard Robbins who supervised Trollenger, who testified that in the first month of employment he spoke to Trollenger on the production ''line on his mold'' and ''I told him his quality was looking real good. I was well pleased with his quality. He needed to start working on his quantity and getting his production higher.'' Robbins testified that Trollenger responded, ''[O]kay,'' and did not complain. Around June 17 he and Plant Superintendent Michael Riordan decided to extend Trollenger's probation ''because his production wasn't up to par where it should have been for an employee of that length of time.'' The quality of his work was good. His production, however, ''varied. It would jump anywhere from the 70's to the 80's back down to the 70's or 69's, you know. It would vary. It was just very inconsistent.'' He delivered the plastic insurance card to Trollenger 2 or 3 weeks after he became a permanent employee as his insurance papers were processed and it normally takes 2 or 3 weeks for the card to be issued. The date of ''6/24/91'' on the card is the date Trollenger became a permanent employee and signed up for his benefits which information would be mailed to the insurance company and the card would be issued ''several weeks later.'' On cross-examination Robbins testified that Riordan made the decision to extend Trollenger's probation on June 16 or 17, but that he had input into the decision. He saw a written copy of the extension of probation but does not believe Trollenger received one. He did notice Trollenger wearing a union hat to work but does not recall when he initially noticed it but it was after his probationary period.

Plant Superintendent Michael Riordan testified and identified an hourly payroll status change form for Trollenger which was initially prepared shortly after Trollenger was hired on ''5/20/91'' for a projected 31-day pay change. On this form Riordan wrote on ''6/16/91'' a Sunday afternoon ''pouring good parts, need to get production up.'' He then discussed with Robbins that they needed to talk with Trollenger as his production was dropping off. Riordan talked with Trollenger the next day on the shop floor and told him ''he'd started out good and that he was catching on good but he'd let his production drop over the last week to ten (10) days and in all likelihood probably at the end of the week when his thirty-one (31) working days would be up, we'd probably end up extending his probation period for another twenty (20) days giving him an opportunity to show that he can bring that production back up.'' ''He [Trollenger] said he thought he could do that.'' ''On Friday, the 24th (of June), I got back with him and told him—again, his production didn't come up much the rest of that week. I got back with him and told him indeed that we were going to go ahead and extend his probationary period for twenty (20) days and he said okay to that.'' Robbins was present at this time. He testified further that when a person reaches his 31 working days and he is to become a permanent employee he is sent to the payroll office to sign up for his insurance benefits. This paperwork is then sent to the insurance carrier and it generally takes 3 to 4 weeks for the employee to receive his plastic card. Even though Trollenger's probationary period was extended he automatically received the insurance coverage and received his raise at the end of the 31 working days. Riordan testified that Trollenger's production started off in the 50–60-percent range. The production they would like a caster to attain is 135 percent. At 100 percent production the incentive rate ''starts kicking in'' and the casters start making incentive pay for each part over 100-percent. Plant Manager Hammat identified the union-dues authorization card signed by Trollenger and dated ''6/30/91,'' a Sunday, which he testified he received from Brooks Wade, then the Union's treasurer and which was received after ''6/30/91'' as he was not working at the plant that Sunday and the cards were usually received 1 to 3 days after the signature.

Analysis

I find the General Counsel has failed to establish a prima facie case of a violation of the Act. Initially, I do not credit Trollenger's testimony that he joined the Union and wore the union hat 1 day after Robbin's initial discussion with him at which Robbins told him he was becoming a permanent employee and a day prior to a second meeting with Robbins at which he was told his probation was to be extended. Rather I credit Riordan's and Robbins specific recount of the sequence of events. I conclude that Trollenger's testimony in this regard was in error and confused concerning the timing of these events. Moreover there does not appear to be any motive or events which would support the inference that the extension of Trollenger's probationary period was motivated by Respondent's desire to retaliate against him because he had joined the Union. Thus, Riordan testified that Trollenger received the normal raise and received the insurance benefits on time at the end of his initial 31-day probationary period. Trollenger apparently successfully completed the extended probationary period as he was still employed a year later when he received another raise. I thus conclude that the extension of Trollenger's probationary period was not motivated by antiunion animus but rather was based on business and operational considerations. Assuming arguendo that a prima facie case has been established I find it has been rebutted by the preponderance of the evidence. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1953); *Roure Bertrand Dupont, Inc*., 271 NLRB 443 (1984).

8. The requests for information

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by its refusal to furnish the Union with information regarding the Respondent's attendance policies and the enforcement thereof which requests were encompassed in the following letters. On February 19, 1991, Union President Thomas Lawson wrote to Plant Manager Richard Hammat requesting a copy of employee Clyde Bradley's attendance and production records for the prior 24 months to prepare for Bradley's upcoming arbitration case. This request was never honored. Hammat testified that the arbitration was settled and he assumed that since the parties were attempting to settle the case, it was unnecessary to furnish the records which would have required a great deal of time to do so. However, Lawson testified he never relinquished his request for these records. In April Lawson was verbally cautioned concerning excessive absences and considered this discipline. On April 22, 1991, he wrote to Production Superintendent Michael Riordan requesting the absentee records of five nonunion employees. His letter states in part,

> Concerning absentees, as for my employment (Thomas Lawson), I have never been reprimanded for absentees or tardies until the past month. I have had 5 tardies in the past 3 months due to two personal reasons and three due to sickness. Two of the sick days, I was so sick that I could hardly work, but yet I came in anyway to do my job and I was still reprimanded. Upon this I am requesting to view some of the following people's records of absentees and disciplinary action taken.
>
> Daniel Meadows, Mark Peeler, Sharon Vinroe, David Harold, Rick Carol
>
> Please set up a time to view these records as soon as possible as I am to meet with the NLRB on Wednesday to file charges.

Lawson testified that he considered the verbal counseling concerning his then recent absences to be discipline and wanted the records to compare his record against the above-named nonunion employees to determine if he was being treated fairly. Hammat and Riordan testified they offered to summarize the records for Lawson and asked why he wanted them as they did not regard the verbal discussion with Lawson about his absences to be discipline. They testified they refused to allow Lawson to review the requested records on privacy grounds as they believed Lawson wanted the records of the aforesaid nonunion employees in order to harass them because of their nonunion status and because they had worked during a previous strike in 1990. They also testified that they had received numerous reports by Sharon Vinroe who told them that Lawson repeatedly harassed her because she had worked during a prior strike which he and coworker and union secretary Lori Johnston had participated in and because he believed she had retained part of his job and that of Lori Johnston when they returned to work after the strike. Lawson acknowledged on the stand that he had called Vinroe numerous names including ''scab'' and had told her he would get her job. Hammat testified that on one occasion after Vinroe had changed her phone number and obtained an unlisted number, Lawson called her at home and told her he was able to get her phone number. According to Hammat this situation between Lawson and Vinroe became so tense that Vinroe asked for and obtained permission to tape record conversations between herself and Lawson in order to obtain evidence of what Lawson was saying to her. Both Riordan and Hammat testified that Vinroe specifically requested that Lawson not be allowed to obtain her records.

On April 26, 1991, Lawson again wrote to Riordan in part as follows:

> As for our letter on April 22, 1991 concerning absentee requests I have yet to get a response from you on this matter. Since this letter, the UNION has had another employee with a write-up, which his last write-up is over six months old. It has been told to us by yourself, Mike, that after a period of time has gone by and your record is cleared, an employee would be reissued another verbal and then they would have 1-1/2 points to receive a written warning. This is why it is so very important that everyone in the plant should be able to review the absentee program. Again, the UNION requests that a copy of the absentee policy be put in the window of the supervisor's office and on the bulletin board so that each employee can review this material and will firmly understand what he or she is getting into.
>
> It is the desire of the UNION that this be done so that everyone will be able to know exactly what is expected and hopefully there will be no more attendance problems. As the UNION has felt that there has been discrimination in the past as for absentee discipline, this would also assure every employee that there is a consistent policy dealt out by the COMPANY.

On May 6, 1991, Lawson wrote to Hammat:

> Again, I am asking to review the following employe's records so that I can determine whether Charles Bradley or myself has a grievance which needs to be filed: DANIEL MEADOWS, MARK PEELER, SHARON VINROE, DAVID HAROLD, RICKY CARROLL, JEFF CORUM. I am willing to view these records at any time to determine whether there is a justification of a grievance or not. I am also requesting an absentee policy be posted. After discussing this with the NLRB attorney, Deanna Williams, she has informed me that it is an employee's right to know any rule or regulation which will affect their job and employment.
>
> The harassment of UNION members still continues. I would appreciate this stopping and that everyone would be treated equally.

On May 13, 1991, Lawson again wrote to Hammat in part as follows:

> Again we are requesting to view the absentee records of some employees so that we can determine whether Charles Bradley or myself have a grievance. We request records on the following employees: DANIEL MEADOWS, JACKIE DAVIS, MARK PEELER, SHARON VINROE, DAVID HAROLD, RICKY CARROLL, JEFF CORUM, and possibly others may be needed to strengthen our case. I am also requesting that the COMPANY post an absentee policy so that each and every employee would know what the policy is.
>
> There have been several occasions this week in which UNION workers were harassed and discriminated against by their supervisors. For example, Keith Sartin was harassed on several occasions by Richard Robbins. Lori Johnston and Thomas Lawson have been harassed by Scott Elrod and Mike Riordan.

On May 20, 1991, Lawson again wrote Hammat in part as follows:

> As for the last letters which the UNION had written requesting absentee records on several employees, we again are asking so that we can investigate grievances pertaining to other employees who have had verbal and written warnings. This is a great concern to the UNION. There is discrimination being shown on behalf of non-union members. We respectfully ask again as we have from June 10, 1990, an absentee policy be posted for everyone to observe and follow so that we will know that there is no discrimination going on.

> As for the harassment of UNION members, this week has chilled out on some, but for others, it still remains a problem. As for Lori Johnston and Thomas Lawson, no one stood on their behalf in the advisory meeting but themselves. As for Willie Smith, no one stood for him but himself. There was no UNION representation. As for the non-union employees in these situations, it was clear that the COMPANY was on their side and in each meeting, had total control of everything. We again plea that this harassment cease.

Analysis

The Respondent contends that it lawfully responded to the Union's request for information but that Lawson on behalf of the Union failed to communicate the reasons for the need to review the requested absentee records. It also contends that it acted lawfully in attempting to protect the privacy of nonunion members particularly Sharon Vinroe who did not want their records disclosed to the Union. I find, however, that the General Counsel has established a prima facie case of violation of Section 8(a)(5) and (1) of the Act by the Respondent's refusals to furnish the requested information as set out above. It is clear from these letters that the Union was engaged in the representation of its members and was concerned about disparate treatment and harassment of union members and possible grievances as well as the actual processing of a grievance in the case of Bradley. I thus find that the information sought by the Union was relevant to the Union's obligations to represent the employees in the bargaining unit. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). *A-Plus Roofing*, 295 NLRB 967 (1989); *New Jersey Bell Telephone Co.*, 289 NLRB 318 (1988). With respect to the alleged confidentiality of the information, the Respondent has the burden of proof concerning this issue *AGA Gas*, 307 NLRB 1327 (1992). I find that the Respondent has failed to sustain the burden of proof as its position is basically that the Union is not entitled to review the records of any nonunion employees because of possible harassment of them by union members. Obviously if it is unable to do so it cannot compare the records against those of union employees to determine disparate treatment or harassment of union employees. In the case of Sharon Vinroe, I find that the Respondent has demonstrated that she was concerned about at least alleged harassment by Lawson and the Respondent had a basis for concern here. However, it did not offer to furnish her record withholding only personal information. I will recommend that Respondent do so.

9. The refusal to allow review of personnel files

In February 1991, Lawson testified he asked his Supervisor Scott Elrod to see his personnel file. Elrod told him he would have to check and eventually told him no. Elrod told him that everything in his files was company property and confidential. Prior to this ''anytime an employee had any questions about their absentees, production, certain information that would be kept in their folder which [was] considered to be [their] personnel file, you would be allowed to go up at the Company's convenience to look at, to see if there was something—if you had an absentee problem you could look and know to straighten it up or whatever.'' Subsequently on cross-examination he testified that the best he could remember it was Scott Elrod who had told him he could not look at his personnel records. Elrod testified he told Lawson he would have to check with Riordan. Elrod testified that ''at one time'' Lawson ''saw his file'' which confirms the past practice as testified to by Lawson.

Analysis

I find that the Respondent violated Section 8(a)(5) and (1) of the Act by its refusal to permit Lawson to review his personnel file which constituted a unilateral change from the past practice of permitting employees to do so without bargaining that change with the Union.

10. The alleged unlawful surveillance

The complaint alleges that the Respondent engaged in unlawful surveillance of its employees in violation of their Section 7 rights. In support of this allegation the General Counsel elicited the testimony of Union President Thomas Lawson. Lawson testified that there was a surveillance camera set up in the men's restroom at the top of the ceiling above the restroom stalls. He also testified there were several other areas in the plant and outside above the lower roof of the plant where he and other employees believed the Respondent had set up surveillance cameras. Four employees testified similarly concerning the camera in the men's restroom and their suspicions that Respondent had set up other cameras in other areas of the plant and outside on the roof of the plant. No witness, however, specifically testified that they had observed a camera in any place other than the camera in the men's restroom.

The Respondent called its plant manager, Richard Hammat, who testified concerning the protracted contract negotiations started in November 1991 and extended into February 1992, during which there was unrest and dissension among certain of the employees including the Union negotiating team. Hammat testified that during the period from late January to March 9, 1991, Respondent experienced six bomb threats which required the evacuation of the plant for substantial periods of time and six false fire alarms also necessitating the loss of production time. As a result of its investigation the Respondent determined that there was an exposed wire which was located at the top of the exposed ceiling beams in the men's restroom which had been shorted out on the occasions of the false fire alarms. In order to find out the cause of the false fire alarms Respondent's management inserted a video camera in the ceiling of the men's restroom which was trained solely on the area of exposed wire of the alarm system which had been previously shorted out. The camera did not show any of the area below this point and did not photograph anyone using the facilities unless they were to climb to the top of the ceiling. On the next occasion of a false alarm the camera photographed one of Respondent's employees who was engaged in tampering with the exposed fire alarm wire in the ceiling of the restroom. The employee was terminated and prosecuted by Respondent. There have been no more false alarms set off on its fire alarm system since that date.

Analysis

I find that the General Counsel has failed to establish a prima facie case of any illegal surveillance engaged in by the

Respondent of its employees. Assuming arguendo that a prima facie case has been established, I find that it has been rebutted by the preponderance of the evidence. Initially the General Counsel did not produce any evidence other than that there was a camera located in the ceiling of the men's restroom. It presented only suspicions of its witnesses that there were other cameras placed inside and outside the plant to surveil its employees. It also produced no evidence to support the inference that the camera in the men's restroom was placed there to engage in surveillance of its employees.

The Respondent produced the unrebutted testimony of Plant Manager Hammat whom I credit fully in this regard as set out above that the sole purpose of the use of the camera was to find out who was setting off the fire alarm by tampering with the wire in the ceiling of the men's restroom and that the camera was trained solely on the ceiling area and not on the lower part of the facility so as to film anyone utilizing the facilities. This was borne out by the introduction in evidence of the film taken by the camera which showed only the upper ceiling of the restroom and showed the employee actually tampering with the fire alarm wire on the occasion of the last false alarm. I therefore find that the sole purpose of the placement of the camera and the limitation of the area photographed to the area of the fire alarm wire, was for legitimate business reasons to find out who was setting off its alarm system and there was no evidence that the Respondent engaged in any surveillance of the employees except insofar as they engaged in the tampering with its fire alarm system. Accordingly, I find that this allegation of the complaint should be dismissed.

I find no merit to the Union's and the General Counsel's contentions that the installation of the camera and surveillance of the bare wire part of Respondent's fire alarm system constituted a unilateral change in working conditions which was subject to bargaining with the Union. Initially, according to the unrebutted testimony of Richard Hammat, Respondent's plant manager, which testimony I credit, this was the only camera installed in Respondent's premises and it was trained only on the ceiling where the bare wire to the alarm system was situated. Thus employees were not being monitored as they went about their daily tasks in the workplace or as they used the restroom facilities. Moreover, Respondent had ample business justification for installing the camera to find out who was setting off the fire alarm or at least to find out who did so after the installation of the camera. The continued unlawful setting off of the fire alarm exposed Respondent's employees to potential safety hazards, and loss of income and exposed Respondent to possible property damage and a loss of production time and earnings.

11. Bypassing the Union and dealing directly with bargaining unit employees

On July 30, 1991, Union President Thomas Lawson filed a second-step grievance on behalf of employees Anthony Johnson and Daniel Meadows concerning a warning they had received. Plant Superintendent Riordan called Johnson and Meadows to his office to discuss the grievance and conducted a 15- to 20-minute meeting with them in the absence of union representation during which they presented their grievances to Riordan and he told them why he believed the warning was proper according to the testimony of Johnson which I credit. Lawson did not learn of the meeting until later. He then asked Riordan why he had not been apprised of the meeting and Riordan told him the matter had been ''settled.'' Lawson complained to Plant Manager Hammat about this and Hammat went directly to the employees and asked them if they wanted to have another meeting. They asked if there would be any change in Respondent's position denying the grievance and Hammat said there would not whereupon they told him they did not want another second-step meeting. The Union then filed a third-step grievance on behalf of Johnson and Meadows. Hammat again went to the employees and asked them if they were aware that the Union had filed the third step and asked them what they wanted to do with the grievance and they told Hammat they had ''dropped'' the grievance. Hammat then told the union representatives that the employees had dropped the grievance and that the matter was closed.

Step two of the grievance procedure provides

> If a satisfactory settlement was not reached in Step 1, the grievance shall be reduced to writing on a grievance form furnished by the Union, duly signed by the employee. *The written complaint must include the specific provision of the Agreement alleged to have been violated and the specific remedy sought by the UNION*. The *written grievance must then be presented to the Superintendent* within five (5) working days following the Step 1 oral answer by the immediate supervisor or the matter will be considered satisfactorily adjusted. The *Superintendent will give his written reply* within five (5) working days following the receipt of the written grievance *to the employee or the employee's steward*. [Emphasis added.]

Respondent contends based on the above language that there is no reference to a meeting or discussion required in step two but rather there is only provision for the presentation of a written grievance to the Superintendent and relies on the language that the Superintendent ''will give his written reply to the employee or the employee's steward'' as evidence that the grievance procedure does not provide for the Union's participation. Respondent also relies on the testimony of Riordan that of 80 grievances he processed as the second-step representative for Respondent, in only three to four instances were meetings actually conducted and also relies on the testimony of Union Secretary Lori Johnston that the Union attempted to change the second step during negotiations to provide that the second-step answer be given to the union steward rather than to the employee. With respect to Hammat's direct discussions with the employees concerning their grievance, the Respondent contends Hammat was merely attempting to accommodate the Union by offering to conduct another second-step meeting but that Lawson was unwilling to meet.

Analysis

I find that Respondent violated Section 8(a)(5) and (1) of the Act by Riordan's conduct of the second-step meeting without affording the union representatives the right to be there in their representative capacity. While it is true that the contractual language relied on does provide for the grievance to be signed by the employee and the answer to be given to the steward or the employee, it also states, ''The written

complaint must include the specific provision of the Agreement alleged to have been violated and the specific remedy sought by the Union.'' This language clearly encompasses a more formal complaint than in the first step and one that includes ''the specific provision of the agreement alleged to have been violated and the specific remedy sought by the Union.'' This necessarily entails union representation. With respect to Respondent's contention that the past practice supports its position, as most second-step grievances did not entail meetings, I find this lends no support to its position as in the instant case there was a meeting lasting 15 to 20 minutes during which Riordan discussed the merits of the grievance with the employees and the employees presented their position without the benefit of union representation and Respondent gave its answer. Under these circumstances I find Respondent bypassed the Union and dealt directly with the employees concerning their grievance in violation of Section 8(a)(5). I also find that Hammat's actions in going directly to the employees to inquire about whether they wanted another second-step meeting and whether they wanted to pursue the third step and his refusal to further process the grievances as requested by the Union were all violative of Section 8(a)(5) and (1) of the Act. See *Van Can Co*., 304 NLRB 1085 (1991); *Top Mfg. Co.*, 249 NLRB 424, 425 (1980).

12. Discontinuance of incentive pay to assembly employees

There are three basic processes used to produce Respondent's products. The initial one is casting wherein a concrete like substance is poured into a mold either by hand or by use of machinery and the product is then removed from the mold after it is dried. The second one is grinding wherein employees work at stations and grind the casted product to remove extra material on it and smooth out defects. These employees work in a vented booth and wear protective breathing equipment to prevent their inhaling dust and debris which is ground from the molded product. The third operation is assembly wherein products are given a final once over and minor defects are smoothed out or patched up and the products are packed for shipment. Each category receives an incentive rate for the amount of products they cast, grind, or assemble. According to the testimony of Plant Supervisor Riordan there had been a practice of occasionally having an assembler grind a product which still needed some grinding after it had passed through the grinding stations and to pay the assembler the grinding incentive rate for doing so. Riordan testified that during the summer of 1991, a practice developed of having the assemblers routinely regrind products which had not been properly ground by the grinders, with the results of Respondent paying a double incentive rate (one to the grinder and one to the assembler for regrinding the product). Riordan testified that when he learned of this in October 1991, which he characterized as a misapplication of the rule, he told his supervisors, Don Grob and Scott Elrod, to meet with the assemblers to tell them that except in unusual cases, products that need additional grinding should be sent back to the grinder who originally ground the product and the assemblers should not grind it, thus resulting in only one grinding incentive rate for the grinders and the loss of the grinding incentive rate for the assemblers who were to no longer do this.

The Union was not informed of this desire to change the procedure and Union President Lawson only learned of the meeting when called by another employee on the floor who was going to the meeting and who told Lawson that Respondent was taking away the assembler's grinding incentive pay. The meeting by Supervisor Grob with the employees got out of hand according to the testimony of Riordan and Lawson and Supervisor Scott Elrod got into a confrontation over the matter without any agreement reached. According to Riordan the matter was subsequently resolved by returning the misground or unground products back to the grinders. It is undisputed that there was no written procedure covering this situation and there was no agreement reached between the Union and the Respondent prior to the change according to the testimony of Lawson which I credit.

Analysis

I find that there was an established past practice of paying assemblers grinding pay and permitting them to regrind unground or misground products that had passed through the grinding station and Respondent's unilateral announcement of a change in this procedure and the elimination of the incentive pay for assemblers performing grinding operations was violative of Section 8(a)(5) and (1) of the Act. *Top Mfg. Co.*, supra.

13. The alleged bad-faith bargaining

The General Counsel contends that the Respondent engaged in bad-faith bargaining relying on the totality of the circumstances in which the bargaining took place citing *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984), and pointing to Respondent's alleged ''unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass the Union and withdrawal of agreed-upon contract proposals.'' The General Counsel also notes that ''the Board looks not only at the parties behavior at the bargaining table, but also to their conduct away from the table as bearing on the issue of good faith citing *Port Plastics*, 279 NLRB 362, 382 (1986). The General Counsel contends that ''the Respondent's numerous and egregious unfair labor practices reflected an attitude contrary to good faith bargaining and provided the context in which the Respondent and Union commenced negotiations in November of 1991.'' The General Counsel also contends that the ''Respondent's conduct at the bargaining table establishes that Respondent entered negotiations lacking the requisite mien which would evidence a desire to reach an agreement with the Union'' citing *Atlanta Hilton*, supra, quoting *NLRB v. Reed & Prince Mfg. Co*., 205 F.2d 131, 135 (1st Cir. 1953), cert. denied 236 U.S. 887 (1953), wherein the court stated that an employer is ''obligated to make 'some' reasonable effort in 'some' direction to compose his differences with the union, if Section 8(a)(5) is to be read as imposing any substantial obligation at all.''

Specifically, the General Counsel contends that ''Respondent's Unyielding Approach on Contract Issues of Substance'' and ''Respondent's Withdrawal of the Parties Agreement on Temporary Transfers'' were violations of Section 8(a)(5) of the Act. The General Counsel contends, relying on the testimony of Plant Manager Hammat, that although Hammat testified extensively concerning areas of agreement reached dur-

ing contract negotiations these were almost always areas where the parties both sought the change such as changes in the grievance and arbitration procedure and the operation of the safety committee. However, the General Counsel contends that in areas of disagreement, Respondent was intransigent such as with the refusal to offer automatic dues checkoff, Respondent's refusal to compromise its proposal to reduce the seniority retained by laid-off employees from the 12 months contained in the prior contract to 6 months, and the Respondent's wage proposal of an increase of only 15 cents an hour for production employees and 40 cents an hour for five leadpersons. While negotiations had been initiated in November 1991 with Union President Tom Lawson as the Union's chief spokesman and Plant Manager Hammat as the Respondent's chief spokesman, on February 19, 1992, an outside labor representative named Joseph Lawson took over as chief spokesman for the Respondent and International Representative Hugh Jacks became the chief spokesman for the Union. The General Counsel called Lori Johnston, the secretary-treasurer and a trustee of the Union and a member of the Union's negotiating committee who testified that the Respondent's position was basically virtually unchanged during the negotiations and that the Union was placed in a position of having to offer counterproposals to its own proposals. International Representative Hugh Jacks testified that he indicated at the February meeting to Respondent's spokesman Joseph Lawson that the Union was willing to move on its proposals and that Respondent's spokesman Joseph Lawson,

> looked at me and [said], if the Union wants a contract, they will accept what the Company has proposed . . . no dues check off, seniority—employees have rights on seniority for six months and after that if they was laid off more than six months, they could not be returned. The whole nine yards that was outstanding and looked at me and said again, if the Union wants a contract, they will accept the Company's proposal.

The General Counsel further contends that ''the most egregious and telling example of Respondent's lack of good faith during the negotiation process was its withdrawal from the parties' agreement on the issue of 'temporary transfers'.'' International Representative Jacks testified that at the mid-February 1992 meeting which he attended, the parties reached agreement on the issue of temporary transfers and agreed that long-term temporary transfers of employees would not exceed 4 to 5 months and that Respondent's chief negotiator, Joseph Lawson, offered to have the agreement typed for the parties to initial at the next bargaining session, but that when he submitted the agreement at the next session it had been changed and permitted temporary assignments to be filled until the particular job or customer order were completed which would require no limit whatsoever on the duration of these temporary assignments. Hugh Jacks testified that when he protested these changes to Lawson, that Lawson told him ''verbal agreements don't matter.'' Jacks' testimony in this regard was corroborated by Lori Johnston. The General Counsel further contends that Respondent's position ''that no final agreement was reached on temporary transfers is without merit,'' citing Plant Manager Hammat's testimony that Respondent wanted ''the transfer language to indicate for the length of the job and [Respondent] agreed not to exceed one year.'' Thus General Counsel argues that Respondent's typed version does not agree even with Hammat's testimony as it contains no limits which would thus ''render meaningless the seniority and bidding procedures contained within any collective bargaining agreement ultimately reached by the parties.'' Union President Thomas Lawson was not asked about these issues when he testified on other matters.

Thus the General Counsel argues that the withdrawal of the agreed upon proposal concerning temporary transfers was evidence of bad-faith bargaining in violation of Section 8(a)(5) of the Act, citing *Mead Corp.*, 256 NLRB 686 (1981); citing *American Seating Co. of Mississippi v. NLRB*, 424 F.2d 106, 108 (5th Cir. 1970), enfg. 176 NLRB 850 (1969). Also citing *Pittsburgh-Des Moines Steel Co*., 253 NLRB 706 (1980); *Langston Cos*., 304 NLRB 1022 (1991); and *Thill Inc*., 298 NLRB 669 (1990).

Respondent contends there was no credible evidence of bad-faith bargaining on its behalf noting that Union President Thomas Lawson was not questioned concerning the negotiations although he had been the chief spokesman for a considerable period of the negotiations commencing in November 1991 and continuing up until February 19, 1992, when Hugh Jacks took over as chief spokesman for the Union. With Respect to the issue of temporary transfers Respondent relies on the testimony of Plant Manager Hammat that at the close of the February 19 meeting there had been no agreement regarding temporary transfers and that Respondent's negotiator Joseph Lawson attempted to reduce to writing a lengthy discussion of this issue which had taken up several hours of the February 19, 1992 session. Respondent also relies on ground rule 4 which had been agreed to by the parties and signed by Lawson at the outset of negotiations as follows:

> Verbal proposals and counter proposals may be presented in support of the good faith bargaining efforts of both sides to reach tentative agreement on contract language. However, *there will be no final tentative agreement until it is reduced to written form, reviewed by both negotiating committees, and signed off by the chief spokesman for each negotiating committee*. [Emphasis added.]

Respondent counters the issue of its alleged intransigence by citing the notes taken by union negotiator, Lori Johnston, that union spokesman, Thomas Lawson, had asked Respondent for a ''best and final'' proposal, and thus contends that the ''best and final'' characterization of Respondent's proposal was made in response to the Union's request. Respondent also relies on Hammat's testimony that the negotiations were difficult and protracted by reason of the Union's initial proposal which sought to change virtually every section of the contract which had been the first contract ever negotiated only a year prior thereto and a lengthy meeting spent on only the issue of a special job description for Thomas Lawson wherein none of the other members of the bargaining unit were covered by job descriptions.

Analysis

I find based on the foregoing and the record as a whole that the evidence is inconclusive regarding alleged bad-faith bargaining by Respondent. Rather it could also support a

conclusion that the parties were engaged in hard bargaining with some difficult issues having been encountered. I find the evidence does not support a finding of surface bargaining in this instance. With respect to the issue of temporary transfers I find Hammat's explanation of Lawson's intent to reduce something to writing to be credible and find the language of the ground rule 4 supports Respondent's contention that tentative agreements were not to be considered final until they had been reduced to writing and signed by both parties. I thus find that these allegations should be dismissed.

14. The withdrawal of recognition

On August 4, 1992, Respondent withdrew recognition from the Union based on the receipt of individual petitions from 37 employees in the bargaining unit of 68 employees stating that the employees no longer desired to be represented by the Union. The petitions from employees constituted a majority of the employees and there is no evidence of supervisory taint in the initiation or gathering of the petitions. However, the General Counsel alleges that the withdrawal of recognition from the Union was not made in a context free of unfair labor practices. As noted above I have found that the Respondent committed several violations of Section 8(a)(1) and (5) of the Act including promises of benefits if employees withdrew from the Union, threats of reprisal because of engagement in protected concerted activities in striking against the employer, bypassing the certified exclusive collective-bargaining representative in dealing with grievances, denying an employee union representation during an investigatory meeting concerning his production which could have and apparently did lead to discipline, by failing and refusing to furnish relevant information to the collective-bargaining representative, and by instituting a unilateral change in the past practice of paying assemblers an incentive rate for performing grinding duties without bargaining that change with the Union.

These violations individually and cumulatively were the type of violations which tend to undermine the Union's status in the employees' eyes and I find they did so and contributed significantly to the loss of support for the Union among the employees leading to the ultimate apparent loss of majority support for the Union. I reject Respondent's contention that the sole contributing factor leading to the loss of majority was the alleged advent of strike violence or misconduct occurring during the strike. Rather I conclude that the loss of majority was the result of the unfair labor practices committed by Respondent which had the effect of undermining the Union's effectiveness in the sight of the bargaining unit employees. Accordingly, I find that the withdrawal of recognition occurred in an atmosphere and context poisoned by Respondent's commission of unfair labor practices which had the effect of contributing significantly to the Union's loss of majority among the bargaining unit employees. I thus find that Respondent violated Section 8(a)(5) and (1) of the Act by its withdrawal of recognition from the Union. See *Riverside Cement Co*., 305 NLRB 815 (1972).

CONCLUSIONS OF LAW

1. The Respondent, Quazite Corporation, is and has been at all times material, an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Oil, Chemical & Atomic Workers International Union, AFL–CIO, Local 3-987 is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate bargaining unit is:

> All production and maintenance employees employed at the Respondent's Lenoir City, Tennessee, plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

4. Respondent violated Section 8(a)(1) of the Act by:

(a) Denying employee Keith Sartin's request for union representation during an investigatory meeting which could have led to discipline.

(b) Promising its employee Brooks Wade benefits if he resigned from the Union.

(c) Promising its employee Mike Summitt that a disciplinary warning issued to him would be removed from his file if he resigned from the Union.

(d) Promising its employee Steve Sloan that he would receive money if he would resign from the Union.

(e) Threatening its employees Thomas Lawson and Mike Summitt with reprisals if they returned to work at Respondent's facility after their engagement in a strike.

5. Respondent did not violate Section 8(a)(4) of the Act by withholding moneys from union supporters and deducting moneys from nonunion employees' paychecks.

6. Respondent did not violate Section 8(a)(3) of the Act by:

(a) Extending the probationary period of employee Billy Trollenger.

(b) Reducing the wages of employees Charles Price and Steve Sloan.

7. Respondent violated Section 8(a)(5) and (1) of the Act by:

(a) Refusing to furnish attendance records of certain named nonunion employees to the Union as requested by the Union.

(b) Refusing to allow employee and Union President Thomas Lawson to view his own attendance record.

(c) Bypassing the Union and holding grievance meetings directly with bargaining unit employees Anthony Johnson and Daniel Meadows and refusing the Union's request to process the grievances.

(d) Unilaterally eliminating grinding incentive pay for assemblers doing grinding work without bargaining the change with the Union.

(e) Withdrawing recognition from the Union with unremedied unfair labor practices outstanding.

8. Respondent did not violate Section 8(a)(5) and (1) of the Act by:

(a) Installing a surveillance camera trained on a wire which had been the previous source of tampering resulting in false fire alarms in the facility.

(b) Its conduct of bargaining with the Union during the 1991 to 1992 contract negotiations.

9. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

As I have found that Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, including the posting of an appropriate notice. I shall also recommend that Respondent be ordered to furnish the attendance records of bargaining unit employees and Thomas Lawson's attendance record as found herein to have been unlawfully denied as requested by the Union after the removal of personal data other than relating to the absences from the record of employee Sharon Vinroe as I find that the testimony of Richard Hammat and of Thomas Lawson himself demonstrated that Vinroe has been the subject of personal harassment by Thomas Lawson and that she has expressed her opposition to the suppling of personal information to Thomas Lawson, the president of the Union. The aforesaid information shall be furnished to the Union within 10 days of its written request therefore. I also recommend that Respondent immediately inform the Union in writing that it will disregard the petitions received from a majority of its employees stating that they no longer desire to be recognized by the Union, rescind its withdrawal of recognition, inform the Union that it recognizes it as the legitimate certified exclusive collective-bargaining representative of its employees in the appropriate unit and it will upon written request bargain with the Union for 1 year from the outset of bargaining and if an understanding is reached, embody it in a signed agreement. It is further recommended that copies of the aforesaid letter shall be sent to each bargaining unit employee. I also recommend that upon the Union's request, Respondent immediately process the grievance of employees Anthony Johnson and Daniel Meadows and inform the employees and the Union in writing that it will do so. I also recommend that Respondent make the assembly employees whole for any loss of grinding incentive pay they may have sustained by reason of the unfair labor practice as computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987)[1]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Quazite Corporation, Lenoir City, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Denying employees' request for union representation during investigatory meetings which could lead to discipline.

(b) Promising its employees benefits if they resign from the Oil, Chemical & Atomic Workers International Union, AFL–CIO, Local 3-987.

(c) Promising its employees that disciplinary warnings issued to them would be removed from their files if they resign from the Union.

(d) Promising its employees that they would receive money if they resign from the Union.

(e) Threatening its employees with reprisals if they return to work after having engaged in a strike.

(f) Refusing to furnish the attendance records of nonunion employees to the Union necessary and relevant to the Union's obligations as collective-bargaining representative of its employees in the appropriate unit.

(g) Refusing to allow the Union's representative, Union President Thomas Lawson to view his own attendance records.

(h) Bypassing the Union and holding grievance meetings directly with bargaining unit employees and refusing the Union's request to further process the grievances.

(i) Unilaterally instituting changes in its past practice by eliminating grinding incentive pay to assemblers performing grinding work without bargaining that change with the Union.

(j) Withdrawing recognition from the Union with unremedied unfair labor practices outstanding.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately rescind its withdrawal of recognition from the Union and notify the Union in writing of this and send a copy of this notification to each employee in the bargaining unit.

(b) Within 10 days of the written request by the Union furnish the Union's representative with the attendance records of its nonunion employees after first removing any personal data from the attendance record of employee Sharon Vinroe other than relating to her attendance.

(c) On request, immediately permit Thomas Lawson to view his attendance records and furnish him with a copy thereof upon his request.

(d) On request, immediately process the grievance of employees Anthony Johnson and Daniel Meadows and inform the employees and the Union in writing that it will do so.

(e) On written request, bargain with the Union as the exclusive collective-bargaining representative of its employees in the above-described appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment for 1 year from the outset of such bargaining and, if an understanding is reached, embody such understanding in a signed agreement.

(f) Make whole with interest the assembly employees for loss of incentive pay for grinding work.

(g) Post at its Lenoir City, Tennessee facility copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon re-

[1] Under *New Horizons*, interest is computed at the ''short term Federal Rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

ceipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT deny our employees' request for union representation during investigatory meetings which could lead to discipline.

WE WILL NOT promise our employees benefits if they resign from the Oil, Chemical & Atomic Workers International Union, AFL–CIO, Local 3-987.

WE WILL NOT promise our employees that we will remove disciplinary warnings issued to them from their files if they resign from the Union.

WE WILL NOT promise our employees that they will receive money if they resign from the Union.

WE WILL NOT threaten our employees with reprisals if they return to work after having engaged in a strike.

WE WILL NOT refuse to furnish the Union the attendance records of nonunion members in the bargaining unit information necessary and relevant to the Union's obligations as collective-bargaining representative of the employees in the appropriate unit as follows:

> All production and maintenance employees employed at the Respondent's Lenoir City, Tennessee, plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT bypass the Union by holding grievance meetings directly with bargaining unit employees and refuse the Union's request to further process the grievances.

WE WILL NOT unilaterally eliminate incentive pay for grinding employees.

WE WILL NOT withdraw recognition from the Union with unremedied unfair labor practices outstanding.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL immediately rescind our withdrawal of recognition from the Union and notify the Union in writing of this and will send a copy of the notification to each employee in the bargaining unit.

WE WILL within 10 days upon written request by the Union furnish the Union's representatives the attendance records of its nonunion employees in the bargaining unit, after first removing any personal data from the attendance record of employee Sharon Vinroe other than relating to her attendance.

WE WILL immediately on request permit Thomas Lawson to review his attendance record and will on his request immediately furnish him with a copy.

WE WILL, on written request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the above described appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment for 1 year from the outset of such bargaining and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL make the assembly employees whole for loss of earnings sustained by them by the elimination of grinding incentive pay with interest.

Our employees have the right to join and support Oil, Chemical, & Atomic Workers International Union, AFL–CIO, Local 3-987 or to refrain from doing so.

QUAZITE CORPORATION